

**304.37-570 Stock offering -- Application -- Conditions for approval -- Hearing -- Filing of registration statement with Securities and Exchange Commission.**

- (1) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the executive director. The executive director's approval may be obtained only through an application and hearing process.
- (2) Every application for approval of a stock offering shall contain the following information:
  - (a) A description of the stock intended to be offered by the applicant, including a description of all shareholder rights;
  - (b) The total number of shares authorized to be issued, the estimated number of shares the applicant requests permission to offer, and the intended date or range of dates for the offering;
  - (c) A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined;
  - (d) The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) or more of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application;
  - (e) A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering;
  - (f) A detailed description of all expenses to be incurred in conjunction with the stock offering;
  - (g) An explanation of how funds raised by the stock offering are to be used; and
  - (h) Any other information requested by the executive director.
- (3) No application regarding a planned stock offering shall be approved unless the plan contains provisions:
  - (a) Requiring a majority of the members of the board of directors of the mutual insurance holding company to be persons who are not interested persons of the mutual insurance holding company or of any subsidiary or affiliated person of the company. The executive director may waive this requirement upon a showing of good cause based on clear and convincing evidence;

- (b) For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the executive director;
- (c) Requiring that the board of directors of any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary of a mutual holding company, or the insurance company subsidiary of an intermediate holding company shall include at least three (3) directors who are not interested persons of the mutual insurance holding company;
- (d) Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not interested persons who shall have sole responsibility for evaluating and approving the price of any stock offering;
- (e) Establishing, within the board of directors of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, an executive compensation committee consisting exclusively of directors who are not interested persons, who shall have sole responsibility for evaluating and approving compensation for directors, officers, and employees;
- (f) Establishing that for any committee of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, at least two-thirds (2/3) of any committee having responsibility for making decisions affecting capital structure or mergers and acquisitions shall not be interested persons;
- (g) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from the purchase or beneficial ownership of any shares of the stock offering, or issuance of stock options to or for the benefit of the officers, directors, and insiders for a period of at least six (6) months following the first date the offering was publicly and regularly traded. This paragraph shall not be construed to limit the rights of officers, directors, and insiders from exercising subscription rights generally accorded members of the mutual insurance holding company, except that, in accordance with any subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than one percent (1%) of the stock offering for a period of at least six (6) months following the first date the offering was publicly and regularly traded;
- (h) For a period of two (2) years after the six (6) month period referred to in paragraph (g) of this section, the officers, directors, and insiders of the mutual

insurance holding company and its subsidiaries and affiliates may not purchase or beneficially own, in the aggregate, more than five percent (5%) of the stock of the insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company; and

- (i) Requiring that all members of the mutual insurance holding company are granted stock subscription rights in any initial stock offering. This requirement may be waived by the executive director upon a showing of good cause at public hearing. For purposes of this paragraph, good cause may only be found where the members of the mutual insurance holding company are given rights to participate in the appreciation of the stock offered that are comparable to stock subscription rights.
- (4) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one (1) class of stock if:
    - (a) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary; and
    - (b) No class of common stock possesses greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.
  - (5) The executive director shall hire, at the applicant's expense, attorneys, actuaries, accountants, investment bankers, and other experts as may reasonably be necessary to assist the executive director in reviewing the application.
  - (6) The executive director shall, in the executive director's discretion, hold a public hearing in accordance with KRS Chapter 13B regarding any application for approval of a stock offering. Upon receipt of an application for approval of a stock offering which includes an initial offering of stock, the executive director shall hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. The executive director shall provide the applicant adequate notice of the hearing so that the applicant can provide notice of the hearing to members of the mutual insurance holding company, in a manner approved by the executive director, not less than twenty (20) days prior to the hearing. Following the hearing, the executive director may approve, conditionally approve, or deny the application. The executive director may approve the plan if:
    - (a) The offering complies with these rules and other provisions of law;
    - (b) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions; and
    - (c) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.

- (7) Nothing in this section shall be deemed to prohibit the filing of a registration statement with the Securities and Exchange Commissioner prior to or concurrently with the giving of notice to members.
- (a) Notwithstanding subsections (1) to (6) of this section, a stock offering which is not an initial stock offering and which offers stock regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the executive director, or designated on the national association of securities dealers automated quotations-national market system may be sold if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of KRS 304.37-500 to 304.37-580. The entity shall deliver to the executive director not less than thirty (30) days prior to the offering a notice of the planned stock offering and information regarding the following:
1. The total number of shares intended to be offered;
  2. The intended date of sale;
  3. Evidence that the stock is regularly traded on one (1) of the public exchanges noted in subsection (a) of this section; and
  4. A record of the trading pace and trading volume of the stock during the prior fifty-two (52) weeks.
- (b) The executive director shall be deemed to have approved the sale unless, within thirty (30) days following receipt of the notice, the executive director issues an objection to the sale. If the executive director issues an objection to the sale, the procedures set forth in subsection (2) of this section shall be followed to determine whether the executive director approves the proposed sale;
- (c) Approval of a stock offering obtained under either subsection (6) or (7) of this section shall expire ninety (90) days following the date of the approval or deemed approval, except as otherwise provided by the order of the executive director; and
- (d) No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant shall contain a representation that the executive director's approval of a stock offering constitutes an endorsement of the price, price range, or any other information relating to the stock.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 546, sec. 15, effective July 15, 1998.

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.